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ABSTRACT

The paper explores recent legal and programmatic changes in the education of the handicapped in Massachusetts. A first section highlights some aspects of the law, including court interpretations of the meaning of "appropriate education" and examples of state legal standards that are different than federal standards. Also addressed are issues of program delivery, identification of young children with handicaps, and systems for program placement. Massachusetts' procedures for developing the Individualized Education Program are reviewed. The authors conclude by raising issues which must be faced by educators, such as cost concerns, and questions of equity and legality. (CL)

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Recent Legal and Programmatic Developments in the Education of the Handicapped in Massachusetts.

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Introduction

It is well documented that historically those who started life with physical or psychological handicaps were further handicapped by the treatment they received in their respective societies. For example outright denial of education or the provision of grossly inadequate education exacerbated handicapping conditions.

In the United States of America only during our recent history has there been broad acceptance of the proposition that most handicapped people are educable and that all can benefit from appropriate schooling. This realization was followed by efforts to use the law to secure educational rights for all handicapped persons. As in other areas of complex social life, when major changes occur and bold legal initiatives are used to spearhead and enforce these changes, it takes awhile for us to arrive at a balanced set of appropriate policies and procedures to achieve our purposes in ways that do not deny some of our other interests and values.

Our presentation will explore some of the recent legal and programmatic changes in the education of the handicapped in the State of Massachusetts, a state whose efforts in this field predate federal efforts and whose current approach to the education of the handicapped may be a weather vane for national developments to come. We will

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first highlight some aspects of the law, then describe some programmatic developments related to legal and educational policies. Finally, we note some issues and raise some questions educators must face.

Legal Developments

While significant legal ground was broken by the Penn. Association of Retarded Citizens v. Commonwealth of Penn. (1972) case and the Mills v. Board of Education (1972) case in Washington, D.C., both of which were litigated under the Constitution, the most important legal development establishing educational rights for the handicapped nationwide in the U.S.A. was the enactment of Congress in 1975 of what is now called the Education of the Handicapped Act (EHA), better known as PL 94-142. To a large extent this law was modeled on earlier enactments in Massachusetts. We will briefly highlight its provisions, indicate some problems in its interpretation and application, and then indicate how recent changes in Massachusetts law address the same issues.*

Among the various provisions of the EHA the law requires that handicapped students be evaluated with care, and that they be provided a free, appropriate education with related services in the least restrictive

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* Although the most important recent legal developments are based on federal and state legislation, the importance of the federal Constitution must not be forgotten. If economic developments or conservative political forces ever lead to the weakening of legislation on behalf of special needs children, the Equal Protection Clause of the Constitution will again be used to pursue educational rights for these children.

environment. Individualized Educational Plans (IEP) must be developed for children between the ages of 3 and 21, and extensive due process rights are provided for the parents and students to help insure that the intent of the law is properly carried out.

Any major legislation is likely to contain ambiguities and the EHA is no exception. Laudatory ideals are embodied in terms like "free and appropriate education," "related services," "least restrictive environment," "individualized education plans," and "due process." Nonetheless, such terms are ambiguous and, to some extent, their meanings have to be clarified through court actions. For example, the case of Amy Rowley involved serious disagreements over the meaning of "appropriate education."

Board of Education v. Rowley (1982).

The Rowley case involved a young, bright, hearing-impaired child, educated in a regular classroom, in other words, "mainstreamed." Amy was making normal progress with the help of a hearing aid, speech therapy three hours a week, and a special tutor one hour each day. While her parents approved these services, they also wanted the school to provide a sign language interpreter, whose assistance would further enhance Amy's learning. The schools denied this request claiming that such support service is too expensive and Amy was making normal progress, thus she was receiving appropriate education as required by law.

A series of appeals culminated in a decision by the U.S. Supreme Court in 1982, rendering the first authoritative interpretation of "appropriate education" under the EHA. The Court found that all the procedural requirements of the EHA had been followed, that Amy was making "adequate" progress while receiving "personalized instruction and related services," and therefore the requirements of EHA were satisfied. Thus, the federal standard provides a "basic floor of opportunity" and not an optimum education that maximizes each child's educational potential. If the child is benefiting pursuant to an IEP and if due process requirements have been observed, the EHA is satisfied according to the Rowley case. Some states, however, have gone beyond this federal standard.

State Legal Standards

While minimal federal standards must be met by states to qualify for federal funds, each state may provide for higher standards either in its constitution or through legislation. Cases from three different states illustrate this principle.

In the same year that the Supreme Court ruled in the Rowley case, the North Carolina Court of Appeals adopted a higher standard of required educational and support services and rejected the federal standard for "appropriate" education. In Harrell v. Wilson County Schools the state court ruled that it was the intent of the North Carolina legislature to "insure every child a fair full opportunity to reach his full potential." Two years later a district court in New

Jersey similarly held that the law of that state requires that the "... school district must provide each handicapped pupil a special education program and services according to how the pupil can best achieve educational success." (Geis v. Board of Education of Parsippany Troy-Hills). Massachusetts law goes even further and specifies a still higher standard as exemplified in the Dartmouth case.

David D. v. Dartmouth School Committee (1985).

David D. was a 17 year old adolescent with Down's Syndrome receiving special education services while attending public schools in Dartmouth, Massachusetts. In addition to his mental retardation, evidence indicated that David exhibited sexual and aggressive behavior toward animals and persons in the community. His parents, along with psychologists and psychiatrists testified that the "elimination of this behavior would require a 24-hour a day training program." Dartmouth school officials, on the other hand, testified that David was making satisfactory progress in school, that there were no significant behavior problems exhibited during the school day, and that they would amend the IEP to include some individual therapy for David and counseling for members of his family. This proposal was unacceptable to David's parents, who filed suit requesting the residential placement.

After examining the evidence presented at the trial, the District Court had to decide what standard the IEP must meet. The EHA

provides a federal minimum standard, the basic floor of beneficial education defined as "demonstrable improvement in the educational and personal skills identified as special needs--as a consequence of implementing the proposed IEP." However, the Massachusetts state law provides a higher standard, which the federal courts must follow when adjudicating a Massachusetts case. The state law seeks "...to assure the maximum possible development of the child with special needs..." and calls for the reevaluation of the placement within ten months and a reassignment if "...the program does not benefit the child to the maximum extent possible" and "to the maximum extent appropriate...educated with children without special needs." (Massachusetts Chapter 766, 1986, pg. 54).

The parties to the case also disagreed on the relative weights to assign to the federal preference for the least restrictive environment on the one hand and the appropriate placement on the other. In other words, if a higher standard of education can be achieved in a more restrictive environment, which criterion is to prevail over the other?

In the Dartmouth case the court ultimately asked whether the local IEP could assure David's maximum possible development in the least restrictive environment consistent with that goal. When the judge, upon examining all the evidence found that 24-hour residential education would be necessary to help David achieve this higher standard, a residential placement was ordered.

Consistent with this decision Massachusetts issued new regulations

September 1986, Section 500 of which provides in part that "Each school committee shall assure the maximum possible development of children with special needs provided that such children, to the maximum extent appropriate, are educated with children without special needs. Children with special needs shall be placed outside the regular educational environment only when the nature or severity of their special need is such that education in a less restrictive educational prototype with the use of supplementary aids and services cannot be achieved satisfactorily." Thus, it is clear that the legal standards for the education of special needs students in Massachusetts are substantially higher than the basic floor provided in the EHA, and higher than standards specified in other states.

Program Delivery

School districts in Massachusetts provide services to special needs children with the explicit philosophy that labeling and categories of handicapping conditions stigmatize children and often result in rigid and narrow educational programs. The noncategorical approach to service delivery draws heavily from Hobbs' (1975) notion that misused diagnostic labels can deplete a child's sense of self-esteem, reduce opportunities for competence development, and permanently blight a child for life. One argument for labeling is that federal government fiscal appropriations are contingent on this type of structure. Massachusetts finds this an unreasonable practice through which children might suffer. Others contend that teachers who

are categorically trained are more effective instructors. This is a highly controversial position with little supportive data. While it has been suggested that categorical training and instruction are useful with severe disabilities (e.g. Smith-Davis, Burke, & Noel, 1984) many would agree that this approach is ineffective with the moderate and mildly handicapped. In fact, one recent study (Marston, 1987) with mildly handicapped students provides experimental evidence to support this contention. Also, diagnostic labels are not reflective of educational practices and offer little information about how to instruct a special needs child. This is particularly relevant when assessing and identifying children who some consider mildly handicapped; i.e. the learning disabled, emotionally disturbed/behaviorally disordered, and educable mentally retarded. Although the literature is replete with data indicating that these children are widely diverse, certain characteristics relevant to school functioning tie them closely together. For example, research has revealed that academic difficulties across these groups may be due to, among others, perceptual-motor, language, attentional, and memory and problem-solving disorders. However, nowhere is it suggested that any one instructional technique is restricted to or efficacious with any one type of child or any one set of characteristics. These issues, when considered in light of the fact that, according to federal documents, over sixty five percent of all exceptional children receive their education in resource room settings, (typical placements for the mildly handicapped) set the stage for the state's higher special education standard.

These tenets underpin an expanded view of educational opportunity for special needs children in Massachusetts. A series of broad and flexible guidelines enable school-based multidisciplinary TEAMS to consider and critically review all students experiencing school difficulty. While students with the more typical, sensory, motor, perceptual, and developmental problems associated with exceptional children are identified the state is also clear that to be eligible for referral students need only meet such criteria as (1) failing to be promoted at the end of the year or be failing two or more non-elective courses at midyear; (2) be suspended for more than five school days within any quarter; or (3) be absent without a medical excuse for more than fifteen days within any quarter.

By casting a wide net for students experiencing academic difficulties schools are not required to define the inconclusive nature of learning disabilities, emotional and behavioral disorders, and mild to moderate mental retardation. Also, it reduces the likelihood that both regular and special education teachers will create their instructional activities around misconceived assumptions associated with diagnostic labels. Massachusetts considers all children deserving of assistance if warranted.

Identification

The state requires each school district to implement an early childhood screening program for three and four year old children. School board approved specialists annually review these children, as well as kindergarten aged children, for potential school difficulty evidenced by health, motor, language, or cognitive problems. For children already attending school every effort must be made to meet a student's special need within the context of the regular program before a referral to special education is made. If this arrangement fails to adequately enhance the student's progress a multidisciplinary TEAM gathers the relevant educational and health information necessary to place the student, in their best judgement, in the least restrictive program. They then compose an Individual Educational Plan (IEP). Assessments are made that consider a child's educational history and current status, specific behavioral abilities along a developmental continuum, and school readiness, functioning, or achievement. The Wechsler Intelligence Scale for Children-Revised, Key Math, Woodcock Reading Mastery Test, Peabody Picture Vocabulary Test, and the Woodcock-Johnson Psychoeducational Battery are examples of formal instruments typically used.

Program Placement

As the state regulations do not call for program services delivered according to categories of handicapping conditions, a prototype system guides the placement decisions. This system is comparable to those found in most states and

represents varying degrees of integration into regular education programs or facilities. The TEAM may assign children to one of the following arrangements:

1. Regular education program with modifications

   - except where required chidlren shall not leave the regular education class or be treated differently than other children in that program

   - program modifications are made by the regular class teacher

   - program specialists assist the regular class teacher in modifying the program and meeting the IEP requirements

   - the daily program duration shall be equal to the regular school day except where otherwise noted as in the child's best interest;

2. Regular education program with no more than 25 % time out

   - special services provided outside the regular classroom but not for more than 25% of the class time for each school day

   - no more than eight children may be assigned to one specialists at one time; 12 if assisted by an aide; 16 if assisted by two aides;

3. Regular education program with no more than 60% time out

   - same provisions as above but with services delivered outside of the regular class for no more than 60% of the school day; and

4. Substantially separate program

   - program comprised entirely of children in need of special education services

   - eight children assigned to one teacher; 12 with an aide

   - age difference between youngest and oldest student shall not exceed 48 months - students shall be grouped according to commonality and compatibility of IEP goals and methods

- program shall be implemented within public regular education facilities equal to to a regular school day length

- a state approved program may occur outside the regular school facility but transitional procedures must be specified

5. Day School Program

- a substantially seperate program occurring outside a regular public facility

- school year length and daily instructional time must meet regular school guidelines

- children return home at night and must not be further than one hour traveling time from their residence

6. Residential program

- same as above except children live at the facility. Other placements include hospital, homebound, home, programs for children ages three and four, and a diagnostic provision resulting from an inability to adequetaly identify a child's needs prior to placement.

Individual Educational Plan

Massachusetts requires perhaps one of the most comprehensive and responsive IEP's available nationvide. The TEAM, along with parents/legal guardians must create an appropriate educational experience for a child while strictly holding to the intent of less restrictive placements. This IEP contains information common to most IEP's; i.e present level of performance, time parameters, goals, objectives, instructional activities, and related services. A significant departure, however, allows parents to accept or reject either the total plan or portions of it. This provision, viewed in terms of the aforementioned assurance of "maximum possible

development", may set forth a series of program modifications that have little educational or legal precedent. Also, restrictiveness takes on significant new properties when adjusted to the state's higher standard. The term "least restrictive environment" (LRE) usually means that a special needs child should be segregated from his nonspecial needs peers as little as possible. That is, each child should be provided education and related services services with no more impact on his individual freedoms than is absolutely necessary. While this intent is laudable it is apparent that schools and parents are not often clear or in agreement as to what this term means. As previously discussed the courts have had to strike a balance between program placement and apropriate education when schools and parents have failed to agree. With the historic evidence of maltreatment providing the impetus to the deinstitutionalization movement, the LRE is often considered within a proximity (geographic) framework. However, as Cruickshank (1977) has pointed out a more restrictive physical environment does not necessarily mean a greater restriction to a child's educational freedom or human potential.

The David D. v. Dartmouth School Committee ruling demonstrates courts are willing to counteract the environmental interpretations of restrictiveness when sound educational provisions are indicated. In other words proximity to regular class placements will not always outweight a more restrictive placement when that placement is proven educationally worthwhile. In a way, in Massachusetts, parents may now have the right to require schools to "predict" where a child should or

will be fuctioning at some time in the future. Also, they may be able to pick and choose where they, or an outside evaluation team, deem this may best occur. Restrictiveness must now be interpreted in terms of factors both within and across individual classrooms, instructional activities, personnel, and programs. Given the general inadequacy of the existing assessment instruments and techniques, and fiscal restraints, schools may be hard pressed to accurately make these decisions. Learning, currently measured by gains realized from prior instruction with performance criteria embodied in IEP objectives, appears counterintuitive to the maximum possible development requirement.

The basic questions now facing schools, that are not so easily answered when developing an IEP, are where are we going (educationally) with this student and how will we know when we get there. As long as school districts do not fall short of the federal floor of opportunity as indicated in Rowley these questions will be clarified either at the local level, through the state's mediation process, or through the courts. While Massachusetts' mandate clearly goes beyond the federal requirements its educational system is primed for further litigitation as parents and schools decide how to best educate special needs children.

Issues and Implications

The variety of issues and implications related to the foregoing bear upon program implementation, economics, legality, and equity.

Although the nation is experiencing a movement towards noncategorical programming there is a paucity of empirical evidence that demonstrates that one approach produces better educational programs. While this is true among the states that adhere to the federal standard a similar outcome is also likely among the states (e.g. Massachusetts, New Jersey, North Carolina) that go beyond the federal requirements although this is also untested at this time. The obvious questions, then, become whether programs implemented under a higher standard produce not only more opportunities to gain access to special education but demonstrate an ability to promote educational progress as well. Simply, does the level of legal enactment correlate with specific instructional activities and program delivery systems. Indeed, these are difficult questions to answer. They require an analysis of the restrictiveness issue and, more importantly, a detailed inquiry into the instructional activities used with children. In effect, a higher standard forces schools to broaden their impression of what constitutes a specialized education yet in no way enhances or guides a practitioners' ability to determine what specific skills should be taught, when skills have been mastered, or how a student learns best. The disparity leaves available a greater opportunity for disharmony between schools and parents/advocates than exists in states meeting the federal mandate. This may lead to several outcomes within the state. One being that additional due process mediation hearings may occur that will impact an already burdened state mediation system.

An obvious issue in that higher standards mandated by state law raises significantly the cost of educating special needs children. It is generally known that the cost of schooling for such children can be significantly higher than the average costs of educating other children. When we accept the higher standards used by states such as New Jersey, North Carolina and Massachusetts, the costs per special needs children can increase dramatically. It's not unusual for 24 hour residential care, year round, using the services of various specialists, to run $30,000, $40,000 or more. In fact, in one case, the cost for one such adolescent amounted to $80,000 for one year. If we consider the hypothetical case of a ten year old in need for such services, which may last until the age of 21, the costs amount to enormous sums. Since neither the federal nor state governments appropriate sufficient funds to cover these costs, the main financial burden falls on local school districts. Small and medium sized school districts finds such financial burdens crushing. In the absence of more assistance from the state or federal governments, some small school districts may face bankruptcy in light of such costs. Furthermore, many such cases might generate a political backlash to change the law and adopt the lower standards as interpreted by the Supreme Court in the Rowley case.

Issues of equity might also be raised by some parents. We can illustrate such an issue with the hypothetical parent who has two children in the middle elementary school. One of them, a special needs child, is receiving the best possible education under the

Massachusetts state law, while the other, a very bright and well functioning child is receiving a mediocre to poor education in an "ordinary" classroom. The parent is convinced that this is inequitable and demands the best possible education for both children. Current law will not help such a parent, but what is to prevent the filing of a lawsuit under the federal constitution's Equal Protection Clause, (or the state constitution's Equal Protection Clause), to seek the best possible education for both children? No such suits have been yet field, but our constitutional law develops through the imaginative application of its provisions to new and changing situations.

A Concluding Comment

In summary, it is clear that the laws of Massachusetts, as well as some other states, provide higher standards of education for special needs children than those provided by federal law. Procedures and administrative machinery are also in place to implement these higher standards. However, important empirical research remains to be done to validate the efficacy of these standards, as well as to find ways of counteracting possible negative consequences related to issues of economics, legality and equity.

References

Board v. Rowley, 458 U.S. 176, 102 S. Ct. 3034, 73 L.Ed. 2nd 690 (U.S.S.Ct. 1982).

Cruickshank, W. (1977). Guest editorial. Journal of Learning Disabilities, 10, 193-194.

David D. v. Dartmouth School Committee, 615 F.Supp. 639 (1984).

Education of all Handicapped Children Act of 1975, PL 94-142, 20 U.S.C. 1401 et seq., (1975).

Geis v. Board of Education of Parsippany Troy-Hills, 556 E.H.L.R. 208(D.C.N.J.1984).

Harrell v. Wilson County Schools, 58 N.C.App. 260, 293 S.E. 2d 687 (1982).

Hobbs, N. (1975). The futures of children: categories, labels, and their consequences. San Francisco: Jossey-Bass.

Marston, D. (1987). Does categorical teacher certification benefit the mildly handicapped child? Exceptional Children, 53, 423-431.

Massachusetts St. 1972 c. 766, Regulations for the Implementation of Chapter 766 of the Acts of 1972, The Comprehensive Special Education Law, 1986.

Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.D.C., 1972).

Pennsylvania Association for Retarded Citizens v. Commonwealth of Pennsylvania, 334 F. Sup. 1257, 343 F. Supp. 279 (E.D. Pa. 1971, 1972).

Smith-Davis, J., Burke, P., & Noel, M. (1984). Personnel to educate the handicapped in America: supply and demand from a programmatic viewpoint. College Park, MD: University of Maryland, Institute for the Study of Exceptional Children and Youth.